IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8673 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HANDUJI HIRAJI THAKORE

Versus

BAKULKUMAR SHANTILAL PARMAR

Appearance:

Petitioner appears in person
Respondents Nos. 1,6 SERVED
MR JV MEHTA for Respondents Nos. 2-3
MR LR PUJARI, AGP for Respondents Nos. 4-5
MR KETAN A DAVE for Respondent No. 7

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 28/10/2004

ORAL JUDGEMENT

The petitioner then a Laboratory

Assistant-cum-Peon in Vakharia P.J. High School, Kalol, the respondent No.2 herein (hereinafter referred to as "the School at Kalol"), challenges the judgment and order dated 16th October, 1989 passed by the learned Gujarat Higher Secondary School Services Tribunal, Ahmedabad (hereinafter referred to as "the Tribunal") in Application No.246/1988.

In the year 1978 the petitioner was appointed as Laboratory Assistant-cum-Peon in Gram Seva Mandir, a higher secondary school situated at village Nardipur. In the year 1984 the petitioner was rendered "surplus" in the said school at Nardipur. The petitioner was, therefore, absorbed as Laboratory Assistant-cum-Peon in the School at Kalol in the year 1984. The respondent No.1 was appointed by the respondent No.2 School as Laboratory Assistant-cum-Peon in the year 1987. In the year 1988 a post of Laboratory Assistant-cum-Peon in the respondent No.2 School was reduced. The respondent No.1 being the junior most Laboratory Assistant-cum-Peon was held to be "surplus". The said order made by the District Higher Secondary Education Officer was challenged before the Tribunal in the above referred Application No.246/1988. The said application was allowed by the Tribunal by impugned judgment and order dated 16th October, 1989. Therefore, the present petition.

The respondent No.1 and the School at Kalol claimed that the respondent No.1 was appointed by the School at Kalol after holding due selection procedure. Whereas the present petitioner was appointed pursuant to the direction issued by the District Higher Secondary Education Officer. Hence, there was no master and servant relationship between the School at Kalol and the petitioner. Since the petitioner was not selected by the School at Kalol, it was the petitioner who should be declared "surplus" and not the respondent No.1. The Tribunal accepted the said argument. The Tribunal set-aside the order declaring the respondent No.1 as "surplus" and directed that the petitioner be declared "surplus" and be absorbed in some other school.

The petitioner has submitted that being a Laboratory Assistant-cum-Peon the petitioner was entitled to promotion as Junior Clerk. The post of Senior Clerk had fallen vacant in the year 1989 or thereabout. The respondent No.2 School was required to fill-in the said post of Senior Clerk by promotion of a Junior Clerk. The consequent vacancy in the cadre of Junior Clerk should have been filled-in by appointing the petitioner by

promotion. However, the School at Kalol, with a view to offering compassionate appointment to the dependent member of the family of the deceased Senior Clerk, did not fill-in the post of Junior Clerk by promotion of the petitioner. Instead, appointed the respondent No.7 as Junior Clerk on compassionate grounds. The said appointment was made in the year 1994. Thus, the petitioner was deprived of his legitimate right to promotion which accrued in the year 1989. The petitioner has, therefore, claimed that he be promoted as Junior Clerk since the year 1989. Pursuant to the impugned order dated 16th October, 1989 the petitioner was declared "surplus" and was absorbed in the higher secondary school at Vamej. The petitioner became "surplus" in the said school at Vamej and was absorbed in the School at Kalol in the month of October, 1996. Since then, the petitioner has been promoted as Junior Clerk in the year 1999.

The present petition essentially arises from the impugned judgment and order dated 16th October, 1989 passed in an application made by the respondent No.1. In my view, in the present proceeding arising from the proceeding lodged by the respondent No.1 the petitioner cannot have a legitimate right to claim promotion or to challenge the appointment of respondent No.7 as Junior Clerk on compassionate grounds. If at all the petitioner has such a right, the petitioner ought to have taken out appropriate proceeding before the concerned forum. The petitioner has informed that he did approach the Tribunal by Application No.302/1989 and claimed promotion as Junior Clerk. The said application was dismissed in or around the year 1993. He admits that the said order made on Application No.302/1989 had not been challenged by him and has thus become final.

As to the impugned judgment and order dated 16th October, 1989, I am of the opinion that the Tribunal has erred in accepting the submission made by the School at Kalol that the respondent No.1 being the employee selected and appointed by the School at Kalol, he could not be considered "surplus". The present petitioner having been appointed through the machinery of the Higher Secondary Education Officer, if anybody had to be declared "surplus", it should have been the petitioner. Such a parochial plea could not have been accepted by the Tribunal. Once the petitioner was appointed in the School at Kalol, irrespective of the mode/source of his appointment, he became the servant of the School at Kalol. For determination of seniority amongst the employees what was relevant was the date of joining the

school and not the source of appointment. Admittedly, the petitioner had joined the School at Kalol in the year 1984; though as a teacher rendered surplus in some other school. The respondent No.1 had joined the service of the School at Kalol in the year 1987. Applying the principle of continuous officiation, undoubtedly the petitioner was senior to the respondent No.1. In that case, it would be the respondent No.1 who would be rendered "surplus" and not the petitioner. If the reasoning of the Tribunal were accepted; a surplus teacher absorbed in some other school would always remain junior in the recipient school though there might be several other persons employed by the recipient school after the date of joining of service by the surplus teacher. In protecting the service of a surplus teacher and in accommodating such teacher in some other school, the State Government could not have an intention to treat such surplus teacher as Junior forever. In my view, the Tribunal has manifestly erred in treating the petitioner junior to the respondent No.1 who admittedly had joined the service of the School at Kalol after the petitioner had joined the School at Kalol as a surplus teacher.

In view of the above discussion, the petition is partly allowed. The impugned judgment and order dated 16th October, 1989 passed by the Gujarat Higher Secondary School Services Tribunal in Application No.246/1988 is quashed and set aside. The order of the District Higher Education Officer declaring the respondent No.1 as surplus Laboratory Assistant-cum-Peon is restored. As both, the petitioner and the respondent No.1 have now been promoted as Junior Clerk in the School at Kalol there shall not be any consequential order. The petitioner's claim for promotion as Junior Clerk in the year 1989 and the challenge to the appointment of the respondent No.7 on compassionate grounds are rejected as not maintainable. Rule is made absolute to the above extent. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

/sakkaf